

May 24, 2002

Armando Falcon, Jr.  
Director  
Office of Federal Housing Enterprise Oversight  
1700 G Street, N.W.  
Fourth Floor  
Washington, DC 20552

Dear Director Falcon:

On March 20, we introduced H.R. 4071, the Uniform Securities Disclosure Act. This legislation would bring Fannie Mae and Freddie Mac under the same federal securities laws that govern all other publicly-traded companies, including Farmer Mac, the only other publicly-traded government-sponsored enterprise. It is our understanding that, in response to our legislation, the Office of Federal Housing Enterprise Oversight has indicated that it will review the public disclosures provided by the two housing GSEs to determine if they are sufficient to promote transparency in the capital markets.

While we support any effort to improve the financial disclosures provided by Fannie Mae and Freddie Mac, we are concerned that your Office does not have sufficient legal authority, staffing, or expertise to determine whether additional GSE disclosures are warranted or what form such disclosures should take. Under our system of functional regulation, other financial regulators have historically recognized the Securities and Exchange Commission's preeminence with respect to financial disclosure and investor protection questions. Furthermore, based on the long history of tension between banking regulators and the SEC in such areas as mark-to-market accounting and loan loss reserves, we have concerns about a "safety and soundness" regulator also being tasked with a public disclosure mission. Congress has made the SEC the nation's financial disclosure regulator, and we are concerned that any OFHEO investor disclosure standards for the GSEs will not fully promote market transparency and investor protection.

With these concerns in mind, please provide us with answers to the following questions:

- Please describe the staff OFHEO has assigned to work on the GSE financial disclosure initiative. Specifically, please tell us how many staff members are focused on this effort and whether it is their full-time responsibility. Please identify the OFHEO staff with senior responsibility for this project and describe his or her professional background, including any experience managing compliance with the

securities laws, preparing financial disclosures in accordance with them for publicly-traded firms and any other relevant experience.

- Please provide us with specific statutory authority that would permit OFHEO to issue any rules, guidance or other binding requirements governing GSE investor disclosures. If these are based on OFHEO's broad safety and soundness authority, please describe how OFHEO will manage any situation in which a public disclosure arguably could increase GSE debt or equity price volatility, thereby presenting a potential conflict with the agency's safety and soundness mission.
- Please advise us as to how OFHEO plans to manage any conflict between investor protection and safety and soundness with particular regard to loan loss reserves. Congress intervened in the Gramm-Leach-Bliley Act to settle a dispute between the SEC and bank regulators with regard to appropriate loan loss provisioning. The SEC believed that banks should not hold large reserves because of their potential to promote managed earnings, while bank regulators believe that loss reserves should always be as large as possible. How will OFHEO resolve such a conflict?
- Similarly, please advise us as to how OFHEO will manage any potential conflicts between investor protection and safety and soundness with regard to mark-to-market accounting. Bank regulators have long opposed this, based on the fear that timely disclosures could lead to investor concern about asset quality that could create volatility in bank debt/equity pricing. How would OFHEO handle this potential conflict in its review of GSE disclosure standards? For example, will OFHEO reflect FAS-133 shareholder equity changes in its own capital calculations or those it will require the GSEs to provide to investors, as the SEC would desire, or will it pursue the policy adopted by bank regulators that allows insured depositories to use regulatory accounting to determine capital?
- If OFHEO were to adopt financial disclosure rules, what agency would enforce compliance with them? Would the SEC be given this responsibility, or would OFHEO? In the event of a financial fraud involving Fannie Mae and Freddie Mac securities, would investors be able to sue the perpetrators, and if so, under which statute? What if the fraud involved both the issuer and broker-dealers in the secondary market? Because Fannie Mae and Freddie Mac securities remain subject to the antifraud provisions of the federal securities laws despite their status as "exempt securities," wouldn't OFHEO disclosure rules create chaos for regulators or investors in the event of litigation?

Finally, please provide us with a specific action plan for any OFHEO corporate disclosure rules for the GSEs, noting your anticipated timing and whether OFHEO plans to act through a formal rulemaking process, through guidance or in any other fashion.

We look forward to a prompt response to our inquiry and request that a response be provided within 15 business days. Should you have any questions about this request, please have your staff contact Mr. Len Wolfson (Rep. Shays) at 225-5541 or Mr. Jeffrey S. Duncan (Rep. Markey) at 225-2836.

Sincerely,

Christopher Shays  
Member of Congress

Edward J. Markey  
Member of Congress